

EXPLANATORY STATEMENT

Veterans' Children Education Scheme (Income Support Bonus) Repeal Instrument 2014

EMPOWERING PROVISION

Subsection 117(3) of the *Veterans' Entitlements Act 1986* (the Act).

PURPOSE

The purpose of the attached instrument (2014 No R11) is to revoke the education benefit known as the "Income Support Bonus".

The Income Support Bonus was paid to certain recipients of education allowances under the *Veterans' Children Education Scheme* (VCES) and was to provide additional support to manage unanticipated expenses.

The VCES is a legislative instrument made under the Act. It enables the Department of Veterans' Affairs (DVA) to pay education allowances to eligible children of veterans in order to assist them with their education.

The Income Support Bonus (bonus) was introduced on 5 March 2013. It was expected to be funded by the Minerals Resource Rent Tax (the MRRT). The Government has decided to rescind the MRRT and, as a necessary consequence, discontinue the bonus for the relevant Social Security customers and eligible students under the VCES (DVA students).

The DVA students eligible for the bonus were:

- secondary/tertiary students aged 16 and above who receive education allowances
- secondary/tertiary students aged under 16 who receive education allowances except those who receive the living at home rate of the education allowance.

The bonus is a tax-free, twice-yearly, non means tested payment of \$105.80 (or \$211.60 per annum) as at 20 September 2013.

The attached instrument amends the VCES to discontinue the payment of the bonus for DVA students.

Rescinding the bonus is a whole-of-government initiative. The revocation of the bonus for Social Security customers was implemented by the *Tax Laws Amendment (Mining Tax Repeal and Other Measures) Act 2014: income support bonus*.

CONSULTATION

The Department of Veterans' Affairs consulted the Department of Social Services. Consultation was by way of telephone calls and e-mails.

Further, discontinuing the Income Support Bonus was an election commitment of the current Government. This election commitment meets the criteria of broad public consultation as the Australian public had access to information about the commitment prior to the election of the current Government (pre-election consultation).

Consultation with clients was not considered appropriate because revoking the Income Support Bonus was a whole-of-government measure and DVA had no independent position in the matter.

HUMAN RIGHTS STATEMENT

The attached legislative instrument has been assessed by DVA as engaging a human right – the right to social security and the right to an adequate standard of living.

The right to social security is contained in article 9 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR). It requires that a country must, within its maximum available resources, ensure access to a social security scheme that provides a minimum essential level of benefits to all individuals and families that will enable them to acquire at least essential health care, basic shelter and housing, water and sanitation, foodstuffs, and the most basic forms of education.

The right to an adequate standard of living is contained in article 11 of the ICESCR. It recognises the right of everyone to an adequate standard of living for themselves and their family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.

The attached instrument limits the right to social security and the right to an adequate standard of living in that eligible DVA students will no longer receive the bonus.

The rights to social security and an adequate standard of living are not absolute and may be subject to permissible limitations. Article 4 of the ICESCR provides that the rights in the Covenant may be subject to limitations that are determined by law which are compatible with the nature of these rights and are solely for the purpose of promoting the general welfare in a democratic society.

According to the Committee on Economic, Social and Cultural Rights, the right to social security includes the right not to be subject to arbitrary and unreasonable restrictions of existing social security coverage. Any removals in entitlements must be justified in line with Article 4 in the context of the full use of the maximum available resources of the State party.

The bonus was introduced in light of the expected revenue flowing from the MRRT. This revenue flow has not eventuated. The Government considers that it is not in the interests of the general welfare to continue such bonus payments in the absence of the resources necessary to do so.

Discontinuing the bonus is a non-arbitrary measure that is reasonable, necessary and proportionate to achieving the Government's objective, for the following reasons:

- the removal of the bonus does not result in payments being reduced to below the minimum level necessary for recipients to meet their basic needs in relation to essential health care, basic shelter and

housing, water and sanitation, foodstuffs, and the most basic forms of education – the bonus was intended to provide additional support above the minimum necessary level;

- Australia meets its obligations under articles 9 and 11 of the ICESCR through the provision of a range of other payments or assistance to recipients of income support in addition to the basic payments such as newstart allowance and parenting payment. The additional payments and assistance includes family tax benefit, rent assistance, education entry payment and other allowances and supplements, and various concession cards which result in reductions to various expenses such as for public transport fares, electricity bills, council rates and motor vehicle registration charges;
- obligations under articles 9 and 11 are also met through the provision of a range of programs and other services by Commonwealth and State governments including employment services and services in relation to health and education;
- the Government considers that these other payments or assistance allow people to realise their right to an adequate standard of living and provide an appropriate balance between support for welfare recipients and providing appropriate incentives for people to re-engage in work and other activities to provide greater financial security for themselves and their families;
- the attached instruments remove the entitlement to the bonus from all eligible DVA students as a group and does not differentiate between recipients;
- the option to retain the bonus was considered by the Government but determined not to be viable in light of the shortfall in revenue generated by the MRRT from which the bonus was intended to be funded and that the payment was generally not considered by social welfare and advocacy groups to be the best way to provide support to vulnerable income support recipients.

Accordingly, the revocation of the bonus by the attached instrument would appear to be reasonable, necessary and proportionate to achieving a legitimate aim and is therefore a justifiable and permissible limitation on the relevant rights.

While discontinuing the bonus will not prevent recipients who were eligible to receive the bonus from accessing the minimum essential levels of the right to social security, the Government will continue to review the adequacy of all welfare payments. Senate Inquiries into the adequacy of the welfare payment system and the impact of legislative amendments moving certain Parenting Payment recipients onto Newstart Allowance were undertaken in 2012. The Government recently announced that it will undertake a further review of the welfare system.

Conclusion

The attached legislative instrument is compatible with human rights to the extent that it limits rights. The limitations are reasonable, necessary and proportionate to achieving a legitimate aim.

Michael Ronaldson
Minister for Veterans' Affairs
Rule-Maker

RETROSPECTIVITY

Yes (paragraphs 3B.1.2(c) and 3B.1.2(d)). The variations do not disadvantage any person or impose any liability on a person other than the Commonwealth. They ensure beneficiaries do not miss out on incidental benefits they should receive – in this case the Income Support Bonus.

DOCUMENTS INCORPORATED-BY-REFERENCE

None.

FURTHER EXPLANATION

Attachment A.

Attachment A

Items	Explanation
1.	sets out the name of the instrument.
2.	provides that the instrument (apart from item 1 of the Schedule) commences when Schedule 8 of the <i>Minerals Resource Rent Tax Repeal and Other Measures Act 2014</i> commences (Royal Assent). Item 1 of the Schedule is taken to have commenced when the <i>Veterans' Entitlements (Veterans' Children Education Scheme – Income Support Bonus) Instrument 2013</i> commenced (the instrument that introduced the Income Support Bonus for veterans' children).
3.	Paragraph 3(a) ensures that the variations made by the instrument do not affect a person's eligibility for the Income Support Bonus which existed before items 2 and 3 of the Schedule commenced. Paragraph 3(b) ensures that where an education allowance is backdated to a date before the Income Support Bonus is discontinued by the attached instrument, the recipient of the education allowance is still eligible for any Income Support Bonus for any Income Support Bonus Test Day that occurred before the bonus was revoked.
Schedule	
1.	substitutes paragraph 3B.1.2. Essentially the substituted paragraph is the same except for (c) and (d). The purpose of these new provisions is to ensure that when an education allowance is backdated a person is eligible for the Income Support Bonus on any Income Support Bonus Test Day that occurred before the bonus was discontinued even though the person did not actually receive an education allowance on that day. The situation is to be treated as if the person actually received the education allowance on the date they were deemed eligible for it.
2.	omits definitions associated with the Income Support Bonus.
3.	omits the Part in the VCES that refers to the Income Support Bonus.